

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

COMMENTS OF RURAL CELLULAR ASSOCIATION

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SUMMARY

As the Commission develops its response to the remand of the United States Court of Appeals for the Tenth Circuit in the *Qwest II* case, several principles should guide its definition of statutory terms, and its consideration of modifications to the non-rural support mechanism.

First, the Commission's definitions, and its modifications to the support mechanism, should result in more efficient carrier investments and operations in rural and high-cost areas.

Second, the agency should promote competition by ensuring that the non-rural support mechanism, and the Commission's definitions of reasonable comparability and sufficient support, are consistent with the agency's principle of competitive and technological neutrality.

Third, the Commission's definition of statutory terms and its non-rural support mechanism should enable universal service support mechanisms to fund broadband deployment.

Fourth, the agency's actions in the remand proceeding should avoid excessive subsidization that could result in unnecessary increases in federal support mechanisms.

In defining the reasonable comparability of services in urban and rural areas, the Commission should make certain that rural consumers have the opportunity to obtain mobile wireless services that are comparable to those available in urban areas. The substantial demand for mobile wireless services in urban areas makes it imperative that the "reasonably comparable" definition ensures that wireless carriers have a fair opportunity to deliver their services in rural areas.

In defining "reasonably comparable" rates, the Commission should replace the existing standard deviation benchmark with a benchmark of 125 percent of the national average urban rate. The use of a clear numerical standard will avoid confusion about the agency's test, and will also respond to the court's concerns by narrowing the existing gap between urban and rural rates.

The Commission should define “sufficient” support in a manner that ensures that rural consumers have access to mobile wireless services that are reasonably comparable to those available in urban areas. Although the Commission must take into account all the statutory principles in defining “sufficient” support, it should give weight to the principles of competitive and technological neutrality, affordability, and reasonable comparability because these principles are directly related to the specific purposes and objectives of high-cost support mechanisms.

The Commission should not give the affordability principle priority over reasonable comparability, in defining “sufficient” support, because reasonably comparable rates will also be affordable, because giving such priority to affordability would make it impossible for rates to be reasonably comparable in rural areas with predominately high-income populations, and because the Commission’s Lifeline mechanism directly addresses the principle of affordability.

The 125 percent benchmark used for rate comparability should also be used for determining the level of disbursements pursuant to the non-rural support mechanism. Replacing the standard deviation benchmark will have the effect of lowering rates in rural and high-cost areas, thus preserving and advancing universal service. In developing modifications to the existing support mechanism, the Commission also should make support fully portable, should promote competitive entry by not restricting support in a service area to a single carrier (or to an incumbent and one competitor), and should geographically target support as much as possible.

The Commission should continue to use forward-looking costs for the non-rural support mechanism, because this model promotes carrier efficiency and therefore benefits consumers, but the agency also should revise and modernize the existing model to recognize the emergence of more efficient telecommunications technologies.

The Commission should proceed with the *Qwest II* rulemaking on its own track before attempting any final action on comprehensive universal service reform. This will help ensure completion of the remand proceeding by the April 16, 2010, deadline, and will also provide time needed to correlate the agency's definitions of the statutory terms, its broadband strategies and plans, and its intercarrier compensation reforms, with its program for universal service reform.

Finally, in considering long-term universal service reform, the Commission should keep two goals squarely in view. *First*, the universal service paradigm should shift away from supporting the last century's copper wire infrastructure for plain old telephone service, and move in the direction of a new paradigm, a central component of which should be the use of support mechanisms that effectively and appropriately support the deployment of wireless technology and the provision of mobile wireless services.

Second, high-cost support mechanisms should be used to fund the deployment of broadband in rural and high-cost areas. Broadband funding provided by the American Recovery and Reinvestment Act of 2009 is a good start, but substantially more funding will be needed to ensure that consumers in rural and high-cost areas have access to broadband services reasonably comparable to those provided to consumers in urban areas. The increasing importance played by broadband services in national commerce, education, health care, public safety, and other areas, makes it imperative that the Commission solve the problems associated with making universal service funding available for broadband.

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COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”), by counsel, hereby provides comments on the Notice of Inquiry¹ adopted by the Commission for the purpose of refreshing the record concerning issues raised by the United States Court of Appeals for the Tenth Circuit (“Tenth Circuit”) in the *Qwest II* decision regarding the Commission’s high-cost universal support mechanism for non-rural carriers.²

RCA is an association representing the interests of nearly 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation and licensed to serve over 75 percent of the country. Most of RCA’s members serve fewer than 500,000 customers. Several of RCA’s members have received eligible telecommunications carrier (“ETC”) status and are currently receiving high-cost support in numerous states, including Wisconsin, Nebraska,

¹ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Inquiry, FCC 09-28 (rel. Apr. 8, 2009) (“*Notice*”).

² *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (“*Qwest II*”).

Oklahoma, Illinois, North Carolina, Wyoming, Montana, Texas, Iowa, Missouri, Kansas, Mississippi, Alabama, and Kentucky.

I. INTRODUCTION.

RCA welcomes this opportunity to participate in the process by which the Commission will craft universal service support mechanisms that address issues and concerns raised by the Tenth Circuit in its decision to remand the Commission's *Order on Remand*, in which the agency had sought to develop a high-cost support mechanism for non-rural carriers.³

The Commission's efforts to accommodate the concerns of the Tenth Circuit are being undertaken while the agency also continues to consider initiatives intended to produce comprehensive reform of the high-cost mechanisms for rural and non-rural carriers.⁴ RCA's members, as contributors to the Universal Service Fund ("USF") and as ETCs, have a stake in the outcome

³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) ("*Ninth Report and Order*"), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003) ("*Qwest I*"), *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559 (2003) ("*Order on Remand*"), remanded, *Qwest II*, 398 F.3d 1222 (2005). The Commission has previously sought comment on matters raised by the Tenth Circuit in *Qwest II*. See *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005) ("*Remand NPRM*"). The purpose of the present notice of inquiry proceeding is to refresh the record that was established in response to the *Remand NPRM*.

⁴ See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) ("*Reverse Auctions Notice*"); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (collectively, "*High-Cost Support Reform NPRMs*"). The Commission also issued a further notice of proposed rulemaking in November 2008 seeking comment on comprehensive universal service and intercarrier compensation reform. *High Cost Universal Service Reform; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) ("*Comprehensive Reform FNPRM*").

of this remand proceeding and in the Commission's overall efforts to reform the operation of its high-cost mechanisms. With a membership predominately composed of small, rural wireless carriers, RCA brings a perspective to the issues confronting the Commission in this proceeding that RCA hopes will assist the agency in developing solutions to the problems identified by the Tenth Circuit in *Qwest II*.

II. DISCUSSION.

Several general principles, which RCA discusses in these Comments, should assist in the Commission's development of a non-rural high-cost funding mechanism that will comport with the Tenth Circuit's decision in *Qwest II*. RCA believes these principles should also be part of the basis upon which the Commission constructs comprehensive universal service reform in proceedings extending beyond the April 16, 2010, deadline the Commission has set for its final action in this remand proceeding.

RCA also addresses the specific issues upon which the Commission has sought comment in the *Notice*. These issues involve the definition of "reasonably comparable" rates and services, for purposes of Section 254(b)(3) of the Communications Act of 1934 ("Act"),⁵ the definition of "sufficient" support for the non-rural funding mechanism, and the design of a non-rural funding mechanism that will comply with the *Qwest II* decision.

A. General Principles the Commission Should Follow in Its Response to the *Qwest II* Remand.

In devising a new non-rural support mechanism that works effectively to aid consumers in rural and high-cost areas and in order for the Commission to be successful in meeting the

⁵ 47 U.S.C. § 254(b)(3), as added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

Tenth Circuit's concerns, the Commission should ensure that any future mechanism is grounded in several general principles.

- The new support mechanism should drive carriers providing service in rural and high-cost areas toward efficient investments and the efficient operation of their networks.
- The principle of competitive and technological neutrality adopted by the Commission pursuant to Section 254 of the Act should form the underpinning of the new non-rural support mechanism.
- The Commission's interpretation and application of the principles contained in Section 254(b) of the Act, and its design of a modified support mechanism for non-rural carriers, should be undertaken with a view toward facilitating the broadband policies that the agency is in the process of developing.
- The Commission should ensure that its modifications to the non-rural support mechanism result in support that is sufficient for consumers to receive the supported services while also avoiding any unnecessary increases in federal support mechanisms.

1. Promoting Efficient Carrier Operations.

A principal objective of the Commission's modifications to the non-rural support mechanism should be to make certain that the mechanism promotes efficiency in carriers' investments, in the deployment of carriers' infrastructure, and in the operation of carriers' networks. Pursuit of this objective is in keeping with the Commission's conclusion that "the optimal approach to minimizing misuse of universal service support is to adopt mechanisms that will set universal support so that it reflects the costs of providing universal service efficiently."⁶

The promotion of efficient carrier operations serves several purposes in connection with the realization of universal service goals. Efficient operations make services provided to consumers in rural and high-cost areas more affordable, since efficiencies tend to lower carriers' costs and these reductions are reflected in the rates for carriers' services. Designing the non-rural support mechanism in a way that encourages carriers to be efficient also advances the goal

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8877 (para. 181) (1997) ("*First Report and Order*") (subsequent history omitted) (footnote omitted).

of achieving reasonable comparability between rates and choices among services in rural and urban markets. This is the case because the presence of competition in urban markets forces efficient carrier operations, which are reflected in rates and choices among services. These positive market effects can be replicated in rural and high-cost markets in part by a funding mechanism that encourages carrier efficiencies.

Finally, lowering carrier costs through a support mechanism that results in efficient carrier operations ensures that support will be sufficient for consumers to receive supported services and advance program objectives, without over-subsidizing rural areas.⁷

2. Ensuring Competitive and Technological Neutrality.

In developing modifications to the non-rural funding mechanism, the Commission must ensure that funding continues to be disbursed according to rules and policies that are competitively and technologically neutral. Doing so is necessary to comply with the core principle of competitive neutrality adopted by the Commission twelve years ago.⁸

Requiring that the non-rural funding mechanism operate in a competitively neutral manner promotes the statutory objective that services in rural and high-cost areas should be available at affordable rates.⁹ Competitive neutrality encourages market entry in rural and high-cost areas, market entry forces incumbents and competitors to operate efficiently in order to attract and retain customers, these efficient operations lower operational costs, and these lower costs, in turn, translate into affordable rates for consumers.

⁷ See, e.g., *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (“*Alenco*”) (finding that “[b]ecause universal service is funded by a general pool subsidized by all telecommunications providers—and thus indirectly by the customers—excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market”).

⁸ See *First Report and Order*, 12 FCC Rcd at 8801 (para. 47).

⁹ 47 U.S.C. § 254(b)(1).

Similarly, adhering to technological neutrality in the administration of a modified non-rural funding mechanism advances the statutory goal of reasonable comparability between services provided in rural areas and urban areas.¹⁰ If non-rural high-cost support is disbursed without any preferences to particular telecommunications technologies, then carriers that compete with wireline incumbent carriers in urban markets by using different technology platforms will also have an opportunity (supported by the receipt of high-cost funding) to expand this competition into rural and high-cost areas. This expansion will bring services to these areas that are reasonably comparable to services available in urban areas, at reasonably comparable prices.

3. Encouraging Broadband Deployment.

A considerable portion of rural America is not connected to the Internet through broadband facilities. One recent estimate is that as many as one-third of all rural households do not have *any* options for obtaining broadband connections.¹¹ This estimate contrasts with estimates that 57 percent of urban residents and 60 percent of suburban residents have subscribed to broadband services at home.¹² Congress has recognized that action is needed to fix this problem, and has directed the Commission to develop a comprehensive rural broadband strategy¹³ and a comprehensive national broadband plan.¹⁴ In addition, Section 254(c)(1) of the Act defines uni-

¹⁰ 47 U.S.C. § 254(b)(3).

¹¹ Jon M. Peha, *Bringing Broadband to Unserved Communities*, THE BROOKINGS INSTITUTION, July 2008, at 5, accessed at http://www.brookings.edu/papers/2008/07_broadband_peha.aspx, *cited in* RCA Comments, American Recovery and Reinvestment Act of 2009 Broadband Initiatives, NTIA Docket No. 090309298-9299-01 (filed Apr. 13, 2009) (“RCA Broadband Comments”), at 7. The Pew Internet & American Life Project has estimated that 38 percent of rural residents had broadband services at home in 2008. John B. Horrigan, *Home Broadband Adoption 2008*, PEW INTERNET & AMERICAN LIFE PROJECT, July 2008, at 3, accessed at www.pewinternet.org/~media/Files/Reports/2008/PIP_Broadband_2008.pdf (“Horrigan”), *cited in* RCA Broadband Comments at 7.

¹² Horrigan at 3.

¹³ See Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, 122 Stat. 1651 (Jun. 18, 2008).

¹⁴ See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

versal service as an “evolving level of telecommunications service, taking into account advances in telecommunications and information technologies and services.”¹⁵

RCA believes that a general principle the Commission should follow, as it considers revisions to its non-rural funding mechanism, is that the agency’s universal funding mechanisms should be brought to bear to assist in the deployment of broadband in rural and high-cost areas.¹⁶ While RCA recognizes that fashioning programs to fund broadband deployment is beyond the scope of this remand proceeding,¹⁷ the development of definitions for Section 254 terms in compliance with the *Qwest II* remand is a prerequisite for the adoption of measures to utilize universal service funding to facilitate broadband deployment.¹⁸ To the extent possible, these definitions should be framed with a view toward facilitating an analysis of how to ensure that future Commission actions to utilize universal service mechanisms to fund broadband deployment will be consistent with the universal service principles codified in Section 254 of the Act.

4. Providing Sufficient but not Excessive Support.

The Tenth Circuit acknowledged that it would be permissible for the Commission to establish funding levels only as large as necessary to meet statutory goals, noting that “excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1).”¹⁹

¹⁵ 47 U.S.C. § 254(c)(1).

¹⁶ See, e.g., *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, 20480-82 (paras. 11-15), 20491 (para. 56) (JB 2007) (recommending that the Commission establish a broadband fund, and add broadband Internet service to the list of services eligible for support under Section 254 of the Act).

¹⁷ See Section II.C.2.b., *infra*, for a discussion of RCA’s recommendations for addressing broadband funding as part of comprehensive universal service reform.

¹⁸ See USA Coalition and RCA Comments on *Comprehensive Reform FNPRM* (filed Nov. 26, 2008) (“Coalition and RCA Comments”), at 20.

¹⁹ *Qwest II*, 398 F.3d at 1234 (citing *Qwest I*, 258 F.3d at 1200).

Wireless carriers, as net contributors to USF funding mechanisms,²⁰ have a stake in the Commission's efforts to develop efficient funding mechanisms. In addition, as the Tenth Circuit observed, fund growth resulting from excessive subsidies could be harmful to consumers. Because of these concerns, the Commission should embrace the principle that its definition of sufficient support, and its modifications to the non-rural support mechanism, should take into account the objective of providing support that is sufficient to enable consumers in high-cost areas to access the supported services while also attempting to avoid excessive subsidization that could result in unnecessary increases in federal support mechanisms.²¹

B. Recommendations Regarding the Definition of Reasonably Comparable, the Definition of Sufficient, and the Funding Mechanism.

The Commission has sought comment on three specific issues that were central to the Tenth Circuit's decision to remand the case to the agency for further proceedings. The first issue involves how the Commission should ensure that its definition of "reasonably comparable" rates

²⁰ In the first quarter of 2008, wireless carriers accounted for 40.7 percent of the total amount of contributions to the USF. *See FCC, Trends in Telephone Service*, Table 19.18 (Aug. 2008) (preliminary figure). In 2008, wireless carriers received approximately 29.7 percent of high-cost disbursements. *See Federal-State Joint Board on Universal Service, Universal Service Monitoring Report*, Table 3.2 (2008) (based on estimated figures). This disparity has been made even worse by the Commission's decision to impose a cap on high-cost disbursements to wireless carriers. *See Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 23 FCC Rcd 8834, 8837 (para. 5) (2008) ("Cap Order").

²¹ *See, e.g., Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, Seventh Report and Order, 14 FCC Rcd 8078, 8111-12 (para. 69 (1999) ("Seventh Report and Order"):

In determining the size of the new federal mechanism to enable reasonably comparable local rates, we must fulfill our statutory obligation to assure sufficient, specific, and predictable universal service support without imposing an undue burden on carriers and, potentially, consumers to fund any increases in federal support. Because increased federal support would result in increased contributions and could increase rates for some consumers, we are hesitant to mandate large increases in explicit federal support for local rates in the absence of clear evidence that such increases are necessary either to preserve universal service, or to protect affordable and reasonably comparable rates, consistent with the development of efficient competition.

is consistent with the provisions and requirements of the statute.²² The next issue involves the steps the Commission must take to demonstrate that its definition of “sufficient” support has adequately accommodated the principles set forth in Section 254(b) of the Act.²³ Finally, the Commission seeks comment on how it should design a non-rural support mechanism that will be consistent with the Act, and that will preserve and advance universal service.²⁴ RCA addresses each of these issues in the following sections.

1. Defining “Reasonably Comparable”.

The Tenth Circuit rejected the Commission’s definition of “reasonably comparable” rates because it concluded that the definition “rests on a faulty, and indeed largely unsupported, construction of the Act.”²⁵ The court explained that the statute requires that “reasonably comparable” rates must be defined in a manner that will both preserve and advance universal service,²⁶ but the court found that the Commission erroneously focused its definition on preserving rate disparities that existed in 1996 “while ignoring its concurrent obligation to advance universal service, a concept that certainly could include a narrowing of the existing gap between urban and rural rates.”²⁷

The court then concluded that the Commission’s use of a comparability benchmark at the urban national average plus 2.0 standard deviations “is rendered untenable because of the impermissible statutory construction on which it rests.”²⁸ The Tenth Circuit noted that, by using

²² *Notice* at paras. 14-16.

²³ *Id.* at paras. 17-20.

²⁴ *Id.* at paras. 21-27.

²⁵ *Qwest II*, 398 F.3d at 1235.

²⁶ *Id.* at 1235-36.

²⁷ *Id.* at 1236.

²⁸ *Id.* at 1237.

this benchmark, “the FCC has ensured that significant variance between rural and urban rates will continue unabated.”²⁹

Before commenting on how the Commission should define “reasonably comparable” rates in light of the *Qwest II* decision, it is important to note that the principle of reasonable comparability in Section 254(b)(3) applies not only to rates, but also to “telecommunications and information *services*, including . . . advanced telecommunications and information *services*”³⁰ The Commission must therefore demonstrate that its definition of “reasonably comparable” includes the advancement of reasonably comparable services in rural and high-cost areas.

An effective way for the Commission to meet the requirement is to ensure sufficient high-cost funding for competitive services. For example, there is substantial demand for mobile voice and mobile broadband services in urban areas across the country,³¹ and strong wireless competition in urban markets is today providing consumers with ample choices for these mobile services. Section 254(b)(3) has established the principle that consumers in rural and high-cost areas are entitled to mobile voice and mobile broadband services that are reasonably comparable to those available in urban areas. The Commission can ensure that reasonably comparable services are available in rural areas by enforcing its own principle that universal service support

²⁹ *Id.* at 1236.

³⁰ 47 U.S.C. § 254(b)(3) (emphasis added).

³¹ According to CTIA—The Wireless Association® (“CTIA”), by mid-2007 there were more than 240 million wireless subscribers nationwide, compared to fewer than 135 million access lines provided by incumbent local exchange carriers (“LECs”). CTIA Comments on *Comprehensive Reform FNPRM* (filed Nov. 26, 2008) (“CTIA Comprehensive Reform Comments”), at 3-4. In addition, “[a]s of December 2007, mobile wireless providers served more than 15 million customers with advanced service lines—nearly 20 percent of all advanced services.” CTIA Comments on Rural Broadband Strategy Public Notice, GN Docket No. 09-29 (filed Mar. 25, 2009), at 3 (footnote omitted). CTIA noted that advanced service lines provide over 200 kbps for both downlinks and uplinks. *Id.*

mechanisms must operate on a competitively and technologically neutral basis to ensure that competitive carriers have the ability to deliver high-quality services to rural areas.³²

RCA also believes that the issue of service quality should be an important component of the Commission's definition of "reasonably comparable" service. The goal of *advancing* universal service will be frustrated if high-cost support is insufficient to enable competitive carriers to deploy sufficient infrastructure to ensure a level of service quality reasonably comparable to that available in urban areas. All of RCA's members can attest that many consumers who need and demand mobile wireless service in rural and high-cost areas are reluctant to "cut the cord" because of concerns regarding wireless service coverage, signal strength, and related service quality issues.

In examining the steps the Commission should take in developing a definition of "reasonably comparable" rates that will be consistent with the statute, it is useful to keep in mind that the Act does not require that rural rates be *equal* to urban rates.³³ It will be sufficient for the Commission to adopt a range of rates that are above the highest urban rate in order to ensure that rural rates are "reasonably comparable" to urban rates. In addition, RCA believes that the Commission, in order to respond to the court's concerns about the existing gap between rural and urban rates, should develop a definition of reasonably comparable rates that demonstrably pre-

³² See Section II.A.2., *supra*. See *First Report and Order*, 12 FCC Rcd at 8802 (para. 48) (concluding that competitively neutral rules will ensure "that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers"); *Western Wireless Corporation*, File No. CWD 98-90, Memorandum Opinion and Order, 15 FCC Rcd 16227, 16231 (para. 8) (2000) ("*Western Wireless*").

³³ See National Association of State Utility Consumer Advocates ("NASUCA") Comments on *Remand NPRM* (filed Mar. 27, 2006) ("NASUCA Comments"), at 43 (pointing out that "[i]f Congress had intended rural rates to be equal to urban rates, the 1996 Act would have said so. Congress even added the qualifier, 'reasonably,' so that rural rates were supposed to be only 'reasonably comparable' to urban rates.").

serves *and advances* universal service. The Commission's definition of reasonably comparable rates also should take account of the fact that the over-subsidization of rates in rural and high-cost areas could result in rates in those areas being considerably below those in urban areas. Such over-subsidization should be avoided not only because it could cause unnecessary growth in high-cost support mechanisms but also because it would not result in reasonably comparable rates.³⁴

The Commission can satisfy the court that the agency's definition of "reasonably comparable" will preserve and advance universal service by basing comparability on a fixed numerical standard that is more aggressive than the 2.0 standard deviation benchmark the Commission currently uses. RCA agrees with the Vermont and Maine public utility commissions that using a fixed numerical standard has the benefit of clearly delineating the range that the Commission considers to be reasonably comparable.³⁵ Using a clear-cut numerical standard avoids any ambiguity or confusion regarding the agency's test for reasonable comparability.

The Commission should abandon its use of a standard deviation benchmark not only because of the concerns expressed by the court, but also because, as the Vermont and Maine commissions have pointed out, the 2.0 standard deviation yardstick has had the effect of "stretching

³⁴ The subsidization of rural incumbents' rates sometimes results in monthly rates below \$10.00. In order to limit this effect of subsidization, in which rates in a rural or high-cost service area are significantly below rates in urban areas, RCA suggests that, in the case of incumbent LECs that are subject to state rate regulation, the Commission consider restricting eligibility for high-cost support to those incumbents that charge monthly rates above a fixed threshold set, for example, at \$20.00 or \$25.00. This would reduce disbursements from federal support mechanisms, but would still ensure that rates in rural and high-cost areas are reasonably comparable to urban rates. To the extent that a state prefers to ensure that rates charged by incumbent LECs in rural and high-cost areas within the state are lower than the rate set by the Commission as the eligibility threshold, the state could use its own universal service support mechanisms to accomplish this goal.

³⁵ See Vermont Public Service Board, Vermont Department of Public Service, and Maine Public Utilities Commission Comments on *Remand NPRM* (filed Mar. 27, 2006) ("Vermont and Maine Comments"), at 29.

the comparability standard and tolerating more and more rate disparity over time.”³⁶ To the extent the standard deviation benchmark has this effect of expanding, rather than contracting, the tolerable gap between rural and urban rates, it cannot be concluded that use of the benchmark for determining rate comparability would advance universal service.

The Commission should replace its standard deviation benchmark with a benchmark of not more than 125 percent of nationwide urban rates.³⁷ RCA agrees with Qwest that reducing “the current benchmark to 125 percent of the national average urban rate, and provid[ing] federal support above that threshold”³⁸ will advance universal service, because it will narrow the gap that currently exists between rural and urban rates and that is tolerated by use of the 2.0 standard deviation benchmark.

The Tenth Circuit in *Qwest II* rejected the Commission’s comparability standard (which, the court noted, equated to 138 percent of the nationwide average rate) because the standard failed to narrow existing rate differences.³⁹ Using a lower measure will directly meet the court’s concern because it will have the effect of narrowing the existing gap between rural and urban rates. By doing so, the use of a 125 percent benchmark will strengthen the Commission’s case that it has created a standard that produces reasonably comparable rates.

³⁶ *Id.* at 30. According to the Vermont and Maine commissions, when rates are widely dispersed, the standard deviation benchmark works in a way that forgives wide differences in rates. “This self-forgiving standard tends to produce the same conclusions under almost any imaginable set of facts, and no matter how widely the actual rates are spread.” *Id.*

³⁷ See *id.* at 20-23; Qwest Comments on *Remand NPRM* (filed Mar. 27, 2006) (“Qwest Comments”), at 23 (arguing that Bureau of Labor Statistics data show that a rate corresponding to a 125 percent benchmark is affordable for rural consumers); Letter from R. Steven Davis, Senior Vice President – Federal Relations, and Shirley Bloomfield, Senior Vice President – Public Policy, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337 (filed May 5, 2008), Proposal for Implementing the Tenth Circuit’s Remand in *Qwest II*) (“Qwest Proposal”), at 24 (arguing that “a benchmark set at 125 percent of the national urban rate would advance universal service by ensuring a smaller variance in rural and urban rates”).

³⁸ Qwest Proposal at 4.

³⁹ *Qwest II*, 398 F.3d at 1236-37.

Finally, RCA agrees with the Vermont and Maine commissions that the Commission should not use rate data to measure reasonable comparability, but instead should rely on carriers' costs⁴⁰ as a proxy for rates.⁴¹ The Vermont and Maine commissions explain that "[l]ocal service rates are affected by many local variables unrelated to universal service and therefore are inherently unsuited to measuring comparability."⁴² The commissions point out that "[e]ven if it were possible to measure rates reliably (and we do not believe it is), the task would be extraordinarily difficult, time consuming, and expensive to adequately control for local variables and produce a measure for reliable comparability or a fair, predictable, and sufficient support mechanism."⁴³

The advantage of using carriers' costs, instead of rates, for purposes of evaluating whether rural and urban rates are reasonably comparable is that measuring a carrier's costs in serving its customers "provides an objective and reliable basis for comparing differences in rural and ur-

⁴⁰ The Vermont and Maine commissions indicate that "costs" could be defined as embedded costs, forward-looking costs, or a combination of both. Vermont and Maine Comments at 27. As RCA discusses in more detail below, RCA believes that a forward-looking cost model should be used both for the comparability standard and for the non-rural support mechanism. See Section II.B.3., *infra*.

⁴¹ See Vermont and Maine Comments at 27-28. The Vermont and Maine commissions propose using "net subscriber costs" as the measure for the comparability benchmark, which the commissions define as carrier costs, reduced by other carrier revenues (such as intercarrier compensation, special access revenues, and private line retail revenues), and divided by the number of subscriber lines. *Id.* at 28. RCA, however, suggests that the Commission should simply use forward-looking carrier costs, divided by subscriber lines. Although there may be advantages to the net cost approach proposed by the Vermont and Maine commissions, RCA believes that more data are needed to determine the impact of such an approach upon carriers serving rural and high-cost areas and upon the application of the comparability benchmark.

⁴² *Id.* at 20. Qwest also opposes using rates to determine comparability:

[I]t is appropriate to use costs, and not actual local rates[,] because few carriers, rural or non-rural, actually charge higher rates in high-cost areas. Many states still use either state-wide average pricing or pricing in reverse relationship to cost, based on a perceived "value of service" in a small geographic area compared to the perceived value in a larger one. With only a few exceptions, retail prices are not yet established on the basis of the actual underlying cost to serve the customer, but rather on some other basis.

Qwest Comments at 31 (footnotes omitted).

⁴³ Vermont and Maine Comments at 20.

ban areas and avoids the many difficulties . . . that arise when comparability is based upon measured local rates.”⁴⁴

To take one example, the rate structures in many rural areas have very small local calling areas, which has the effect of limiting the utility of local service for customers because there are relatively few terminating access lines within the calling area. Because of this, customers may pay low rates for their local service, but they also incur substantial charges for toll calls outside their small local calling areas. In these circumstances, the relatively low rates for local service make rural/urban comparisons impossible. Customers in urban areas are generally able to call many thousands of numbers within an exchange because population densities in their local calling areas are much higher. These rate disparities caused by variations in the definitions of local calling areas illustrate the fact that arriving at per line cost comparisons for providing local service is a better proxy for measuring rate comparability.

Using costs as a proxy for rates makes it much easier to compare rural and urban “rates,” because there are common grounds for comparing carriers’ costs in rural and urban markets (in contrast to the many disparities that make rate comparisons extremely difficult). The ease with which these cost comparisons can be made, in turn, makes it easier for the Commission to demonstrate that its benchmark is, in fact, producing reasonably comparable rates. RCA agrees with the Commission that, “[b]ecause the underlying purpose of rates is to recover the cost of providing service, comparing costs provides a more accurate and consistent measure of what rate differences would be in any given state, given identical state rate policies.”⁴⁵

⁴⁴ *Id.* at 28.

⁴⁵ *Order on Remand*, 18 FCC Rcd at 22572 (para. 23).

2. Defining “Sufficient” Support.

Section 254(e) of the Act provides that universal service support “should be explicit and sufficient to achieve the purposes of [Section 254].”⁴⁶ The Commission chose to define sufficiency only in terms of the reasonable comparability of rural and urban rates.⁴⁷ The Tenth Circuit rejected this approach because it “ignore[d] the vast majority of § 254(b) principles by focusing solely on the issue of reasonable comparability”⁴⁸ The court therefore decided that the Commission, in developing its definition of “sufficient” support, “must articulate a definition . . . that appropriately considers the range of principles identified in the text of the statute.”⁴⁹ The Commission now has asked for comment “on how the Commission should balance all seven principles in section 254(b) of the Act in defining the term ‘sufficient.’”⁵⁰

Before RCA addresses the Tenth Circuit’s instructions to the Commission, it is important to emphasize at the outset that the Commission’s definition of sufficient support is critically important for consumers in rural and high-cost areas who are seeking to achieve choices in services that are reasonably comparable to choices available in urban areas. The Commission’s definition of sufficiency therefore should encompass the policy that the amount of support must be sufficient to enable consumers in rural and high-cost areas to access a range of services, including mobile wireless voice and broadband services, that are reasonably comparable to those available in urban areas, at reasonably comparable prices.⁵¹

⁴⁶ 47 U.S.C. § 254(e).

⁴⁷ *Order on Remand*, 18 FCC Rcd at 22578 (para. 30).

⁴⁸ *Qwest II*, 398 F.3d at 1234.

⁴⁹ *Id.*

⁵⁰ *Notice* at para. 17.

⁵¹ See Alltel Reply Comments on *Remand NPRM* (filed May 26, 2006), at 3 (arguing that rural consumers must be provided with “access to bona fide choices among competing platforms for the provision of telecommunications and information services”).

In order to achieve this comparability, support must be sufficient to enable the ubiquitous deployment of mobile wireless infrastructure in rural and high-cost areas, because this deployment is critical to facilitate providing rural consumers with services that are comparable to those available in urban markets. Meeting this goal through the definition of sufficient support will acknowledge the obvious demand for mobile wireless services in both urban and rural areas,⁵² and the public safety⁵³ and economic development benefits provided by these services. The recent economic downturn is accelerating consumers' desire to cut the cord, however, the opportunity to do so hinges on a consumer's having a high-quality wireless service at home.⁵⁴

Turning to a consideration of each of the Section 254(b) principles, RCA first notes that the Tenth Circuit found that:

⁵² See Stephen J. Blumberg and Julian V. Lake, National Center for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, July-December 2008*, at 1 (May 6, 2009) (finding that one out of every five American homes (20.2 percent) had only wireless telephones during the second half of 2008, and more than one out of every seven American homes (14.5 percent) received all or almost all calls on wireless telephones despite having a landline phone in the home); Alan Fram, *Fifth of U.S. Homes Opt for Cell Phones Only*, ASSOCIATED PRESS, May 6, 2009, accessed at <http://www.msnbc.msn.com/id/30601416/from/ET/>.

⁵³ See, e.g., United States Cellular Corporation ("U.S. Cellular") and Rural Cellular Corporation Comments in WC Docket No. 05-337 and CC Docket No. 96-45 (filed June 6, 2007), at 17-20:

People living in areas with high-quality wireless service have high expectations that a phone can be used in an emergency, which does not usually happen within easy reach of the wireline phone attached to the kitchen wall. They expect their children of driving age to be able to access emergency services if needed. They expect 911 and E-911 services to function. They expect to be able to use the phone when they travel or are displaced by a natural or man-made disaster. Rural consumers share these desires, but sadly, many have much lower expectations because effective wireless services are not available.

CTIA has pointed out that "[i]f one of the drivers behind universal service is to insure that people have telephone access in a health or safety emergency, the phone of choice for the vast majority of Americans—young and old, male and female, poor and rich—is a cell phone." CTIA Comments on *High-Cost Support Reform NPRMs* (filed Apr. 17, 2008), at 4 (quoting New Millennium Research, *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys* (Apr. 2008) at 16)).

⁵⁴ This fact is primarily why RCA members have applied for ETC status—to improve rural networks so that their customers can use their phones everywhere they live, work, and travel.

Under the Act, the FCC’s duty [to base its universal policies on the principles listed in Section 254(b)] is mandatory. . . . However, we posited [in *Qwest I*] that while “the FCC must base its policies on the [Section 254(b)] principles, . . . any particular principle can be trumped in the appropriate case. . . . [T]he FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal.”⁵⁵

The court thus has given the Commission a fair degree of leeway to account for the principles in Section 254(b) in connection with its fashioning of a definition of “sufficient” support. As it approaches this task, the Commission has asked whether “some principles [are] more directly related to the specific purposes of non-rural high-cost support than the other principles, and [whether] they [should] be given greater weight than the remaining principles[.]”⁵⁶

RCA believes that the statutory principles of reasonable comparability and affordability, and the principle of competitive and technological neutrality adopted by the Commission pursuant to the authority granted in Section 254(b)(7) of the Act, should be given more weight than the other principles listed in Section 254(b) because these principles are more directly related to the specific purposes of non-rural high-cost support. RCA discusses these principles, and the remaining principles listed in Section 254(b), in the following paragraphs.

Competitive and Technological Neutrality.— An effective universal service mechanism must develop competitive markets by providing a level of support that is sufficient to achieve the program’s goals regarding the delivery of services to consumers in rural and high-cost areas. As the *Alenco* court said, “[t]he Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*.”⁵⁷ Accordingly, in order for support to be sufficient to preserve and advance universal service, as required by Section 254(b)(5), the Commission must ensure that support is distributed on a competitively and technologically neutral basis, to the car-

⁵⁵ *Qwest II*, 398 F.3d at 1234 (quoting *Qwest I*, 258 F.3d at 1200).

⁵⁶ *Notice* at para. 17.

⁵⁷ *Alenco*, 201 F.3d at 610 (emphasis in original).

riers that consumers choose. Congress decided in the 1996 Act that promoting competition in rural and high-cost areas would preserve and advance universal service because competition compels carriers to operate efficiently, it drives down prices for telecommunications services, and it ensures that technological advances will find their way to rural and high-cost markets.

Adherence to competitive and technological neutrality is critically important to wireless carriers because their ability to enter and compete in rural markets is impeded to the extent that high-cost mechanisms do not work in a competitively neutral manner.⁵⁸ Given the congressional judgment that competition is an effective vehicle through which universal service can be preserved and advanced, the Commission has a responsibility to follow its own principle of competitive neutrality. One means of doing this is for the Commission to define sufficient support in a way that promotes and sustains competitive entry in rural and high-cost markets.

A recent Commission action unfortunately shows how *not* to follow the principle of competitive neutrality. The “interim” high-cost cap adopted by the Commission more than a year ago violated the Commission’s core principle of competitive neutrality by imposing a unilateral cap on only one industry segment’s high-cost support. The cap violated competitive neu-

⁵⁸ For example, the Commission, in an analogous circumstance involving a state program that limited the ability of carriers other than incumbent LECs to receive universal service support, concluded that:

A mechanism that provides support to ILECs while denying funds to eligible prospective competitors thus may give customers a strong incentive to choose service from ILECs rather than competitors. Further, we believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. In fact, such a carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its state government-imposed competitive disadvantage. Consequently, such a program may well have the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a) [of the Act].

Western Wireless, 15 FCC Rcd at 16231 (para. 8).

trality on its face because it targeted *only* competitors.⁵⁹ In developing its definition of sufficient support, the Commission should reverse course, correct the action taken in the *Cap Order*, and ensure that support is sufficient to fund the provision of services in rural and high-cost areas in a competitively neutral way so as to allow all potential market entrants an opportunity to enter rural and high-cost markets based on the merits of their business plans and service offerings, free from policies that skew the market.

Affordable Rates.—Section 254(b)(1) provides that services should be available at affordable rates. The Commission should conclude that, because its definition of reasonable comparability will have the required effect of preserving and advancing universal service, it can also find that the reasonable comparability of rural and urban rates, in accordance with the Commission’s definition, will result in making rates in rural and high-cost areas affordable.⁶⁰ The reason for this is that competition drives down rates in urban areas, by rewarding the more efficient carriers. The competitively-produced rates in urban areas are therefore “affordable” in the sense that they reflect the prices consumers are willing to pay in a competitive market. To the extent that a universal service mechanism produces “reasonably comparable” services in rural and high-cost areas at rates approximating those in urban areas, the mechanism is both “sufficient,” for purposes of Section 254(b)(5), and has adequately taken into account the principle that rates in rural and high-cost areas should be “affordable.”

The Commission should not consider itself compelled to push its high-cost support mechanisms any further in an effort to produce “affordable rates,” for several reasons. First, as the

⁵⁹ See, e.g., Letter from Eric C. Peterson, Executive Director, RCA, *et al.*, to Acting Chairman Michael J. Copps, FCC (filed May 1, 2009), Attachment, RCA Position Paper, “Cut the Cap: The Commission Should Repeal the Interim Cap on High-Cost Universal Service Support Received by Wireless Carriers” (“RCA Position Paper”) at 16-17.

⁶⁰ See CTIA Comments on *Remand NPRM* (filed Mar. 27, 2006), at 4.

Vermont and Maine commissions have explained, high-cost mechanisms are too broad-gauged to be effective in making rates “affordable.” This is the case because the statute permits ETCs to use support, for example, for the upgrade and maintenance of facilities,⁶¹ and the use of high-cost support for such purposes may not result in any direct reduction of end-user rates.⁶² Of course, subsidies may indirectly reduce rates by permitting investment in high-quality networks that allow service to be delivered at a reasonably comparable price that would not be possible without the infrastructure subsidy.

Second, the Lifeline program established by the Commission is much more directly aimed at achieving the statutory goal of affordable rates than are the agency’s high-cost mechanisms, since the purpose of the Lifeline program is to “reduce[] end-user charges that low-income consumers in participating jurisdictions pay for” local services.⁶³ RCA urges a closer examination of whether the Lifeline program, which has not been expanded in many years, is a better vehicle for achieving “affordability.” Since affordability of any product or service depends on a buyer’s income, one can infer that Congress wanted the Commission to focus more on low-

⁶¹ 47 U.S.C. § 254(e).

⁶² See Vermont and Maine Comments at 6.

⁶³ *First Report and Order*, 12 FCC Rcd at 8957 (para. 341). See *id.* at 8845 (para. 124) (explaining the Commission’s decision “to channel support designed to assist low-income consumers through the Lifeline and Link Up programs, rather than through the high cost support methodology”); *Seventh Report and Order*, 14 FCC Rcd at 8097 (para. 39):

Affordability problems, as they relate to low-income consumers, raise many issues that are unrelated to the need for support in high-cost areas, and section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates. The specific affordability issues unique to low-income consumers, including all factors that may be relevant to means-testing or other need-based inquiries, are best addressed at the federal level through programs specifically designed for this purpose. Indeed, the Commission already has such programs in place, namely, the Lifeline and Link-Up programs, which provide assistance for low-income consumers to get connected and stay connected to the telecommunications network.

income citizens when it adopted an affordability goal, while not abandoning the concurrent goal of achieving reasonably comparable rates for service.

In this regard, RCA notes that making affordability a driver for establishing a “sufficient” funding mechanism could have the effect of permitting the principle of affordability to trump the principle of reasonable comparability. If affordability were made the main standard for the non-rural support mechanism, then rates in rural areas with predominately high-income populations could rise significantly above those in urban areas.⁶⁴ This would disadvantage lower income residents in these high-income areas, especially those lower income residents who would not qualify for Lifeline support. Although the *Qwest II* decision permits an analysis by the Commission in which one Section 254(b) principle could trump another principle,⁶⁵ it would not be appropriate for the Commission to conclude that affordability should trump reasonable comparability. This is particularly true in light of the fact that, as RCA has discussed, achieving reasonable comparability between rural and urban rates will also have the effect of making rural rates affordable.

For these reasons, although weight should be given by the Commission to the principle of affordability in connection with the agency’s modification of its non-rural support mechanism, the agency should not adopt any definition of affordability, nor should it prescribe any “affordability benchmark” for purposes of the non-rural support mechanism. RCA believes that weight should be given to the affordability principle because doing so is consistent with the Commission’s conclusion that a major objective of high-cost support is to help ensure affordable access to supported services.⁶⁶ But, as RCA has argued, this objective can be achieved by relying upon

⁶⁴ See NASUCA Comments at 33-34.

⁶⁵ See *Qwest II*, 398 F.3d at 1234.

⁶⁶ See *Remand NPRM*, 20 FCC Rcd at 19736 (para. 9), *cited in Notice* at para. 18.

rules designed to achieve reasonably comparable rates, thus avoiding the pitfalls associated with turning affordability into the primary standard for the non-rural support mechanism.

Reasonable Comparability.—Section 254(b)(3) of the Act provides that rates and services in rural and high-cost areas should be reasonably comparable to rates and services in urban areas. Although the Tenth Circuit has made it necessary for the Commission to demonstrate that its non-rural support mechanism has been developed with a view toward all the Section 254(b) principles, RCA believes that the Commission should find reasonable comparability, and competitive and technological neutrality, to be the most significant and effective principles.⁶⁷ If the Commission is successful in using high-cost support to make rural rates and services reasonably comparable to urban rates and services, then the Commission will have traveled far down the path of ensuring that its support mechanisms preserve and advance universal service, and that these mechanisms will pass muster with the court.

Comparable rates and services will mean that consumers in rural and high-cost areas will not be relegated to second-class status. As RCA has discussed, mobile wireless voice and broadband services are ubiquitous in most urban markets throughout the nation, with consumer demand for these services continuing to rise even as demand for wireline services continues to plummet.⁶⁸ Moreover, the revenue per minute of wireless voice service has dropped from \$0.47

⁶⁷ See NASUCA Comments at 29 (arguing that the Commission should “find reasonable comparability to be the most important and most effective principle”).

⁶⁸ The Commission has indicated that “there are more wireless subscribers than wireline switched access lines[.]” citing figures that show approximately 129.7 million wireline end user switched access lines and 249.2 million mobile wireless subscribers as of the end of 2007. *Notice* at para. 19 & n.69 (footnote omitted) (citing Local Telephone Competition: Status as of December 31, 2007, Industry Analysis and Technology Division, Wireline Competition Bureau, at Tables 7, 14 (Sept. 2008)). According to CTIA, “wireline switched access lines peaked at 191.5 million in December 2001, and since have fallen precipitously to 163 million in July 2007. Of these, fewer than 135 million were provided by ILECs.” CTIA Comprehensive Reform Comments at 3.

per minute in 1994 to \$0.06 per minute in December 2007, a decline of 87 percent.⁶⁹ Support mechanisms that promote comparable services and service quality (as required by the statute) will help ensure that consumers in rural and high-cost areas have access to mobile wireless voice and broadband services that can provide unique benefits, while also aiding economic development in these areas. These support mechanisms will also contribute to the advancement of universal service, because they will facilitate the deployment and availability of new technologies at a pace that is comparable to deployment in urban markets.

Ensuring that rates for services in rural and urban markets are comparable will help to preserve and advance universal service by facilitating greater levels of subscribership in rural and high-cost areas. This effect will be further enhanced by the Commission's enforcement of its competitive neutrality principle, so that competitive entry in rural and high-cost markets can drive down rates in a manner that replicates the operation of competitive markets in urban areas.

Access to Advanced Services.—Section 254(b)(2) states that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.”⁷⁰ In taking this principle into account, the Commission should define “sufficient” support in a manner that promotes the deployment of advanced wireless technology platforms. Such platforms, including LTE technology,⁷¹ will provide consumers in rural and high-cost areas with mobile voice and mobile broadband capabilities comparable to those available in urban markets. Making high-cost funding available for advanced technology upgrades of wireless networks will facili-

⁶⁹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Service*, WT Docket No. 08-27, Thirteenth Report, DA 09-54 (rel. Jan. 16, 2009), para. 193 (Table 12).

⁷⁰ 47 U.S.C. § 254(b)(2).

⁷¹ LTE (Long-Term Evolution), a fourth generation mobile broadband platform, will be capable of providing downlink speeds ranging up to 100 megabits per second (Mbps). See Patrick Bernard, *LTE Mobile Broadband Market to Generate More Than \$70 Billion During Next Five Years*, TMCNET (Mar. 31, 2009), accessed at www.cn-c114.net/583/a400636.html, cited in RCA Broadband Comments at 21, n.55.

tate the reasonable comparability of rural and urban services, thus serving the overall goal of preserving and advancing universal service.

USF Contributions; Support for Schools, Libraries, and Health Care.—The statute provides that “[a]ll providers of telecommunications services should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service.”⁷² Section 254(b)(6) states that “[e]lementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services”⁷³

Although contribution methodologies used by the Commission generally have little relevance to the sufficiency of high-cost support mechanisms,⁷⁴ the level of contributions could be considered inequitable if they were generated to fund an “excessive subsidization” of ETC operations.⁷⁵ The Commission therefore should seek to ensure that its definition of “sufficient” support avoids excessive subsidization of services delivered in any rural or high-cost area.

Similarly, the principle stated in Section 254(b)(6) does not have particular relevance to the definition of “sufficient” support for purposes of the Commission’s high-cost support mechanisms, because the agency has established separate, targeted mechanisms to promote access to advanced telecommunications services by schools, libraries, and health care providers.⁷⁶ It also should be noted, however, that, by defining “sufficient” support in a way that promotes the deployment of infrastructure for the delivery of advanced telecommunications and information

⁷² 47 U.S.C. § 254(b)(4).

⁷³ *Id.*, § 254(b)(6).

⁷⁴ See NASUCA Comments at 35; Qwest Comments at 15.

⁷⁵ See *Qwest II*, 398 F.3d at 1234 (citing *Qwest I*, 258 F.3d at 1200).

⁷⁶ See 47 C.F.R. §§ 54.500–54.523, 54.601–54.625.

services pursuant to Section 254(b)(2), the Commission will also advancing the principle stated in Section 254(b)(6).⁷⁷

3. Support Mechanism.

The Tenth Circuit concluded in *Qwest II* that “[o]n remand, the FCC must utilize its unique expertise to craft a support mechanism taking into account all the factors that Congress identified in drafting the Act and its statutory obligation to preserve *and* advance universal service.”⁷⁸ The Commission seeks comment on how to go about this task.⁷⁹

a. Benchmark of 125 Percent.

RCA has recommended in these Comments that the Commission use a benchmark of 125 percent of the national average urban rate for purposes of defining reasonably comparable rural rates.⁸⁰ The same benchmark should be used for the non-rural support mechanism. Under this approach, non-rural high-cost support would be provided above the 125 percent threshold. As discussed earlier, RCA supports the proposal made by the Vermont and Maine commissions that the benchmark be applied to costs—not rates—both for purposes of the reasonable comparability definition and for purposes of the non-rural support mechanism. This approach is consistent with the Commission’s view that using costs as a proxy for rates for purposes of determining non-rural support enables the accurate determination of rate differences among the states:

[W]e must consider cost differences in determining which states need federal support to achieve rural rates that are comparable to urban rates. . . . [T]he Joint Board and the Commission always have looked at cost differences, not rate differences, in determining high-cost support. States may base rates on a variety of factors, so that comparing only rates, which may or may not include implicit support, would not be a fair and equitable way to apportion federal support. Because

⁷⁷ See Vermont and Maine Comments at 18.

⁷⁸ *Qwest II*, 398 F.3d at 1237 (emphasis in original).

⁷⁹ *Notice* at para. 21.

⁸⁰ See Section II.B.1., *supra*.

the underlying purpose of rates is to recover the cost of providing service, comparing costs provides a more accurate and consistent measure of what rate differences would be in any given state, given identical state rate policies. States with high costs would have higher rates in the aggregate than those in other states, were it not for federal support. We disagree with the argument that the statutory principle of reasonable comparability requires the determination of non-rural support to be based on rate differences.⁸¹

Use of the 125 percent threshold would be responsive to the Tenth Circuit's directive because non-rural support, coupled with the reasonable comparability definition, would tend to lower rates in rural and high-cost areas (as compared to continued use of the 2.0 standard deviation as the benchmark), thus serving the goal of preserving and advancing universal service.

b. Portability of Support.

A second way to ensure that the non-rural funding mechanism preserves and advances universal service is to make the support fully portable. In discussing the high-cost support mechanism for non-rural carriers, the Commission has concluded that:

When a line is served by an eligible telecommunications carrier, either an ILEC or a CLEC, through the carrier's owned and constructed facilities, the support flows to the carrier because that carrier is incurring the economic costs of serving that line.

...

A competitive carrier that has been designated as an eligible telecommunications carrier shall receive universal service support to the extent that it captures subscribers' lines formerly served by an ILEC receiving support or new customer lines in that ILEC's study area. At the same time, the ILEC will continue to receive support for the customer lines it continues to serve. We conclude that paying the support to a CLEC that wins the customer's lines or adds new subscriber lines would aid the emergence of competition.⁸²

Portability promotes competition, which gives rise to more efficient carrier operations, and increased subscribership in rural and high-cost areas due to the downward pressure on rates that is

⁸¹ *Order on Remand*, 18 FCC Rcd at 22572 (para. 23) (footnotes omitted).

⁸² *First Report and Order*, 12 FCC Rcd at 8932 (paras. 286-287).

generated by competitive markets. Promoting competitive entry also enables the deployment of technologically innovative networks that will make advanced services available to consumers.

c. Promotion of Competitive Entry.

The non-rural support mechanism should not restrict support to a single ETC (or to an incumbent and only one competitor) in a given geographic area. Restricting competitive entry would not be consistent with the goal of the 1996 Act to promote both universal service and competition in local exchanges.⁸³ Section 214 of the Act clearly contemplates multiple competitors becoming qualified to receive support.⁸⁴ The court in *Alenco* made clear that the statute requires that the market must govern the provision of services in rural and high-cost markets:

the [USF funding] program must treat all market participants equally—for example, *subsidies must be portable*—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.⁸⁵

Concerns have been expressed in the past that allowing competitive entry in rural and high-cost markets would cause unwarranted growth in the high-cost funding mechanism.⁸⁶ Portability solves this problem. If high-cost funding is fully portable among all carriers, both incumbents and competitive ETCs, then competitive entry and the presence of multiple carriers in a given rural or high-cost market cannot create any upward pressure on high-cost funding mechanisms because the amount of support in a given service area is limited by the number of customers served in that area.⁸⁷

⁸³ See *Alenco*, 201 F.3d at 616.

⁸⁴ See 47 U.S.C. § 214(e)(2).

⁸⁵ *Alenco*, 201 F.3d at 616 (emphasis added).

⁸⁶ See *Reverse Auctions Notice*, 23 FCC Rcd at 1524 (Statement of Kevin J. Martin).

⁸⁷ See U.S. Cellular Comments on *High-Cost Support Reform NPRMs* at 13-14.

d. Targeting Support.

In making modifications to the non-rural support mechanism, the Commission also should ensure that the mechanism targets support as accurately as possible, because doing so will help achieve the objective that the level of support does not exceed the amount necessary to achieve statutory goals and will also promote competitive entry.⁸⁸ Moreover, in keeping with RCA's suggestion that the Commission's high-cost funding mechanisms should assist in the deployment of broadband services in rural and high-cost areas,⁸⁹ RCA encourages the Commission to rely upon broadband mapping initiatives that are currently underway as a principal means of ensuring the accurate targeting of support for broadband services.⁹⁰ RCA agrees with Verizon that:

As the Commission and other policymakers consider efforts to increase the availability of broadband in rural areas, it is essential that they rely on hard data that identify where the gaps in broadband availability actually are so that attention and finite resources will be effectively and efficiently targeted to those areas.⁹¹

⁸⁸ In discussing non-rural service areas, the Commission has made clear that large service areas may be problematic because they could impede the targeting of support and competitive entry:

[W]e conclude that service areas should be sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors . . . [and] that large service areas increase start-up costs for new entrants, which might discourage competitors from providing service throughout an area because start-up costs increase with the size of a service area and potential competitors may be discouraged from entering an area with high start-up costs. As such, an unreasonably large service area effectively could prevent a potential competitor from offering the supported services, would not be competitively neutral, would be inconsistent with section 254, and would not be necessary to preserve and advance universal service.

First Report and Order, 12 FCC Rcd at 8849 (para. 184) (footnotes omitted).

⁸⁹ See Section II.A.3., *supra*.

⁹⁰ See RCA Broadband Comments at 28 (citing the Broadband Data Improvement Act, Pub. L. 110-385 (47 U.S.C. § 1301 note) (2008)).

⁹¹ Verizon and Verizon Wireless Comments on Rural Broadband Strategy Public Notice, GN Docket No. 09-29 (filed Mar. 25, 2009), at 3.

e. Forward-Looking Costs.

An important issue relating to the Commission's review and modification of the non-rural support mechanism involves the costing methodology that should be used in connection with calculating ETCs' support.⁹² RCA suggests that the Commission should continue to use a forward-looking cost model for non-rural areas, but should also consider revising and updating the model.

The Commission has long held the view that "the proper measure of cost for determining the level of universal service support is the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported services"⁹³ Finding that using forward-looking economic costs will create support mechanisms that make certain that support corresponds to the efficient costs of providing supported services, the Commission has concluded that a forward-looking cost model "will preserve and advance universal service and encourage efficiency because support levels will be based on the costs of an efficient carrier[.]"⁹⁴ and that "a forward-looking economic cost methodology creates the incentive for carriers to operate efficiently and does not give carriers any incentive to inflate their costs or to refrain from efficient cost-cutting."⁹⁵

The Commission's findings regarding the utility of the forward-looking cost model as a basis for determining non-rural support do not need to be revisited, since the forward-looking cost model demonstrably forces efficient carrier operations and thus serves the statutory purpose

⁹² See Notice at para. 24.

⁹³ *First Report and Order*, 12 FCC Rcd at 8899 (para. 224). See *id.* at 8936 (para. 293) (finding that the use of forward-looking cost principles promotes competition by providing accurate investment signals to potential entrants, that forward-looking cost methodologies could bring greater economic opportunities to rural areas by promoting competitive entry and the provision of new services, and that forward-looking cost models would "compel carriers to be more disciplined in planning their investment decisions").

⁹⁴ *Id.* at 8899 (para. 225) (footnote omitted).

⁹⁵ *Id.* at 8900 (para. 226).

of preserving and advancing universal service. RCA also agrees with the Vermont and Maine commissions, however, that the current forward-looking cost model should be revised and updated to improve its accuracy.⁹⁶ The Vermont and Maine commissions suggest, for example, that customer location data inputs must be updated (in part because the use of old data has produced erroneous allocations of new special access lines to rural wire centers, “inaccurately reduc[ing] the estimated cost differences between urban and rural areas”⁹⁷), that newer calculation methods are needed to locate feeder and distribution plant, and that better assumptions must be developed regarding carriers’ investment costs, carriers’ expenses, and the effects of geography on costs.⁹⁸

RCA believes that the Commission should strive to accomplish as many of these revisions and updates to the existing forward-looking cost model as quickly as possible, but RCA also recognizes that, since the Commission does not contemplate taking final action in this rulemaking before April 16, 2010, revisions to the forward-looking cost model are not likely to be accomplished in the near term.⁹⁹ The timetable needed to revise and modernize the current cost

⁹⁶ See Vermont and Maine Comments at 38-39.

⁹⁷ *Id.* at 38.

⁹⁸ *Id.* at 39. CostQuest Associates (“CostQuest”) also has identified several issues relating to the “Synthesis Model” currently used by the Commission for determining universal service funding, including the lack of access to customer datasets, the use of rectilinear distances that do not follow roads or account for natural hindrances to routing, the poor quality of information regarding local exchange boundaries, and the use of vertical and horizontal coordinates to locate central office switches. See CostQuest Comments on *Comprehensive Reform FNPRM* (filed Nov. 26, 2008) (“CostQuest Comprehensive Reform Comments”), Attachment, James W. Stegeman, Dr. Steve Parsons & Mike Wilson, “The Advanced Services Model: Proposal for a Competitive and Efficient Universal Service High-Cost Approach for a Broadband World” (“Advanced Model Paper”), at 20.

⁹⁹ CostQuest has outlined a timetable for revisions to the current model that would likely take over a year, and such a process could not begin until the Commission reaches decisions in this rulemaking and takes steps to initiate the modernizing and updating of the current model. CostQuest estimates that the first phase of revising the model (involving production of a conceptual design document) would take approximately five months, the second phase (involving implementation of a proof of concept design through a prototype model tested in several service areas) would take approximately three months after completion of the first phase, and the final phase (implementation of a national platform, to be done as a collaborative

model should not, however, deter the Commission from moving forward with this process, especially in light of the demonstration made by CostQuest of the advancements that can be accomplished through use of current network costing models.¹⁰⁰

f. Managing the Size of High-Cost Support Mechanisms.

Using a benchmark of 125 percent of the national average urban rate for purposes of the non-rural support mechanism will have the likely effect of increasing the level of funding needed, because the new benchmark will narrow the gap between rates in rural and urban areas and, by doing so, will increase the amount of disbursements for which non-rural carriers qualify.

This is a matter of concern to RCA, because wireless carriers pay significantly more into the fund than they draw out. RCA believes, however, that other actions it is advocating in these Comments will be effective in limiting growth in the size of the high-cost support mechanisms.

For example, continued use of an updated forward-looking cost model will introduce greater carrier efficiencies that will in turn reduce upward pressures on the size of the support mechanism. Continued application of the Commission's principle of competitive and technological neutrality will promote competitive entry and reward carriers' efficient operations, thus further reducing pressures on fund growth. The narrow targeting of support will have the same salutary effect. Finally, reducing support to incumbent carriers that charge less than a benchmark rate for basic service will provide an appropriate carrot and stick incentive for states to develop their own universal service mechanisms to reduce prices for basic telephone service as they deem appropriate.¹⁰¹

effort involving the Commission, the Federal-State Joint Board on Universal Service ("Joint Board"), state utility commissions, and interested carriers) would involve an extended timeframe. Advanced Model Paper at 4.

¹⁰⁰ *Id.* at 22-32.

¹⁰¹ See RCA's discussion of this issue in Section II.B.1., *supra*.

RCA is confident that, taken together, these various initiatives and policies will serve to more than offset any increases in the size of the support mechanisms resulting from use of the 125 percent benchmark. The Commission should invite submissions from carriers and state commissions to enable a data-driven decision as to how fund size would be affected by these measures.

C. The Timing and Components of Comprehensive Universal Service Reform.

RCA discusses in this section the timing and process for comprehensive universal service reform, as well as the relationship between comprehensive reform and the issues being addressed by the Commission in this remand proceeding. RCA also outlines some general recommendations for the contours that comprehensive reforms should take.

1. The Timing and Process for Comprehensive Reform.

The Commission asks in the *Notice* for comment about the relationship between the Commission's resolution of the issues in this proceeding and more comprehensive reform of the high-cost universal service support system. The Commission lists three options: (1) modify the existing mechanism for non-rural carriers pending comprehensive reform; (2) replace the current non-rural mechanism with a new mechanism that could become a basis on which to craft more comprehensive reform; or (3) move forward with a more comprehensive reform of high-cost support.¹⁰²

Although the temptation to forge ahead immediately with a global universal reform effort is tempting, RCA believes that the first option listed by the Commission is the most practical and realistic one, for several reasons. Proceeding with the remand rulemaking on its own track will heighten the likelihood that the Commission will take final action by the promised April 16,

¹⁰² *Notice* at para. 21.

2010, deadline and thus perhaps write the final chapter in its efforts to arrive at definitions of “reasonably comparable” and “sufficient” support that can survive judicial review. Recent history suggests that attempting to fold the remand issues into a more comprehensive rulemaking could threaten the Commission’s ability to complete timely action on the remand.¹⁰³

In addition, the manner in which the Commission decides to define the statutory terms should have an important bearing on decisions it makes in the comprehensive reform proceeding. Establishing what exactly constitutes reasonable comparability and sufficient support will serve to define the parameters of reform measures that can be adopted and justified because they preserve and advance universal service.¹⁰⁴

Finally, other pending proceedings, in addition to this proceeding, should be completed by the Commission before it attempts to proceed with any final action regarding universal service reform. For example, the Chairman of the Commission, in consultation with the Secretary of Agriculture, must submit to Congress not later than May 21, 2009, a report regarding a comprehensive rural broadband strategy.¹⁰⁵ Among other things, the report must make recommendations regarding needs assessments and solutions for the build-out of rural broadband facilities, must identify how federal programs and resources can respond to rural broadband requirements, and must describe goals and timeframes for achieving the purposes of the report.¹⁰⁶ The submis-

¹⁰³ See, e.g., RCA Position Paper at 2, n.2 (noting the Commission’s failure last year to complete action on comprehensive universal service reform within the statutory one-year deadline following the Joint Board’s reform recommendations).

¹⁰⁴ See, e.g., Coalition and RCA Comments at 5 (noting that, until the Commission adopts specific definitions for the Section 254(b) terms, proposals for the reform of support mechanisms “cannot be analyzed to determine which would best further the goals of the Act”).

¹⁰⁵ See Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, 122 Stat. 1651 (Jun. 18, 2008), § 6112.

¹⁰⁶ *Id.*, § 6112(a)(1).

sion of this report later this month will serve as an initial step in guiding the reform of universal service support mechanisms so that they can help to facilitate broadband deployment.

A second step will involve completion of the Commission's development of a national broadband plan, which must be accomplished not later than February 16, 2010.¹⁰⁷ Issues to be addressed in the national broadband plan include "an analysis of the most effective and efficient mechanisms for ensuring broadband access by all the people of the United States[,]""¹⁰⁸ a "detailed strategy for achieving [the] affordability" of broadband service,¹⁰⁹ and "an evaluation of the status of deployment of broadband service"¹¹⁰ With respect to this latter point, RCA believes that it is important that the Commission's action on comprehensive reform await sufficient progress on the development of a highly granular map of existing broadband services in rural and high-cost areas, since this information is a prerequisite for the crafting of support mechanisms for broadband deployment.¹¹¹

A third step involves the Commission's making sufficient progress on intercarrier compensation reform. Reform of universal service support mechanisms ideally should be undertaken in tandem with intercarrier compensation reform, so that the relationship between compensation mechanisms and explicit support mechanisms can be rationalized in a manner that is equitable to service providers contributing to the USF, that ensures sufficient support for the preservation and advancement of universal service, and that also produces a unified and simplified intercarrier compensation system that "will encourage the efficient use of, and investment in, advanced tele-

¹⁰⁷ See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), § 6001(k).

¹⁰⁸ *Id.*, § 6001(k)(2)(A).

¹⁰⁹ *Id.*, § 6001(k)(2)(B).

¹¹⁰ *Id.*, § 6001(k)(2)(C).

¹¹¹ See Section II.B.3.d., *supra*.

communications and broadband networks, spur intermodal competition throughout the United States, and minimize the need for future regulatory intervention.”¹¹²

2. Recommendations for Comprehensive Reform.

Because RCA believes that the definitions of statutory terms, and the non-rural support mechanism, should be addressed by the Commission in this proceeding with a view toward the principles and policies that should govern the agency’s efforts to adopt comprehensive universal service reform, RCA presents in this section two general recommendations for the path that comprehensive reform should take.

a. High-Cost Mechanisms Should Effectively Support Wireless Technologies.

In the *Comprehensive Reform FNPRM* adopted by the Commission last November, the agency put on the table a package of proposed reforms that would have virtually dealt wireless carriers out of providing supported services in rural and high-cost areas. This package—which included single-winner reverse auctions, repeal of the identical support rule for the rural carrier support mechanism, the shift to a “carrier’s own cost” methodology for wireless ETC funding, and a five-year phase-out of high-cost funding available to wireless ETCs—would have substantially reduced the ability of wireless carriers to continue providing supported services in rural and high-cost areas.¹¹³

As the Commission continues its consideration of comprehensive reform, it must steer a different course. It simply would not make sense for the Commission to ground high-cost support rules in wireline-carrier-centric mechanisms that invest substantial amounts of high-cost funding to support infrastructure that delivers fixed voice service (also referred to as plain old

¹¹² *Comprehensive Reform FNPRM*, Attachment A (Chairman’s Draft Proposal), at para. 157.

¹¹³ See U.S. Cellular Comments on *Comprehensive Reform FNPRM* (filed Nov. 26, 2008), at 30.

telephone service, or POTS). The Commission’s universal service policies must break away from underwriting the last century’s copper wire technology geared to the provision of voice service, and move to a new paradigm that will work better to both preserve and *advance* universal service.

Ensuring that high-cost mechanisms effectively and appropriately support the operations of wireless carriers should be a central component of this new paradigm. RCA believes that such reforms will serve the statutory goals of putting consumers first¹¹⁴ and fostering competition in local exchanges throughout the country. The growing demand for mobile wireless services in both rural and urban areas,¹¹⁵ and the public safety and economic benefits of mobile wireless services in rural areas,¹¹⁶ highlight the direction in which technology is driving the telecommunications and information services marketplace. Universal service reforms need to keep pace.

RCA has outlined in these Comments several ways to accomplish the goal that high-cost support mechanisms should promote the deployment of wireless infrastructure and the delivery of wireless services in rural and high-cost areas. These steps are summarized here:

Promote Efficient Operations.—Wireless carriers have the capability to deploy and utilize very efficient infrastructure in rural and high-cost areas. The use of efficient infrastructure and efficient carrier operations reduce costs, drive down rates, and ease pressure on the growth and size of support mechanisms. Basing support mechanisms on the forward-looking costs of efficient technologies is one example of the steps the Commission should take to promote efficient operations.

¹¹⁴ See *Alenco*, 201 F.3d at 620 (emphasis in original) (finding that “[t]he Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*”).

¹¹⁵ See Section II.B.1., *supra*.

¹¹⁶ See Section II.B.2., *supra*.

Enforce Competitive and Technological Neutrality.—The purpose of the Commission’s neutrality principle is to ensure that consumers in rural and high-cost areas receive the benefits that flow from competition. The high-cost mechanisms that take shape as part of the Commission’s comprehensive reform efforts should not give any advantage to particular classes of carriers or to particular technologies.¹¹⁷ As RCA has mentioned,¹¹⁸ the “interim” cap on wireless carriers’ funding pursuant to the rural carriers’ high-cost mechanism inherently violates the competitive neutrality principle.

Qwest’s proposal for revising the non-rural cost mechanism compounds this problem with its “assumption” that the Commission would freeze the amount of support available to wireless carriers in areas supported by the non-rural mechanism.¹¹⁹ The Commission not only should remove the cap and reject Qwest’s “assumption,” but also should take other steps, as part of comprehensive reform, that ensure that funding mechanisms do not conflict with the Commission’s own principle.

Open Up Markets to Competition.—One such step is for the Commission to reject proposals to create monopolistic or oligopolistic markets in rural and high-cost areas. Single-winner reverse auctions would have this effect. The proposal advanced by Embarq, under which an incumbent LEC would serve a wire center but “there will never be more than one additional [support] recipient in that wire center[,]”¹²⁰ would also have the effect of limiting competitive entry,

¹¹⁷ This result is required by the statute. *See Alenco*, 201 F.3d at 620 (emphasis added) (finding that “[s]o long as there is sufficient and *competitively-neutral* funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act”).

¹¹⁸ See Section II.B.2., *supra*.

¹¹⁹ See Qwest Proposal at 4, n. 12.

¹²⁰ Letter from David C Bartlett, Vice President – Federal Government Affairs, Embarq, to Chairman Kevin J. Martin, Commissioner Michael J. Copps, Commissioner Jonathan S. Adelstein, Commissioner Deborah Taylor Tate, and Commissioner Robert M. McDowell, FCC, CC Docket No. 96-45, WC Docket

contrary to both the principle of competitive neutrality and the pro-competitive policies of the 1996 Act. The Commission's comprehensive reforms should avoid these outcomes because competitive entry and the neutral disbursement of high-cost support advance the goals of the 1996 Act and best serve the interests of consumers in rural and high-cost areas.

Provide Targeted Support on a Fully Portable Basis.—Another way for the Commission to continue its adherence to the principle of competitive and technological neutrality is to target an appropriate amount of support to a granular area and provide that support to the carrier that gets the customer on a fully portable basis. Full portability of support¹²¹ enforces competitive neutrality by removing any advantage incumbent LECs would have as a result of their receipt of high-cost support.

Portability encourages competitive entry by carriers that are able to operate most efficiently, thus benefiting consumers through the provision of a greater choice of service options and by lowering rates. Boiled down, portability enables a consumer to choose the service that best suits his or her needs and support only goes to the carrier that wins the customer, thus aligning the incentive to provide high-quality service with the incentive to gain support in a high-cost area.

b. The Focus of Universal Service Should Shift Toward Broadband.

In order for Commission policies to continue to advance universal service, the next horizon for the Commission to pursue is the utilization of high-cost support to promote the deployment of broadband service in rural and high-cost areas. The fact is that “[i]f you’re not con-

No. 05-337 (filed Sept. 18, 2008), A Plan to Promote Broadband Deployment and Reform High-Cost Support Without Increasing Overall USF Levels (“Embarq BCS Plan”), at 29.

¹²¹ See Section II.B.3.b., *supra*.

nected [to broadband], you're sitting out the dance.”¹²² Given the burgeoning importance of broadband in national commerce, education, health care, and the daily lives of workers and consumers throughout the country, the focus of universal service support mechanisms should shift away from voice-grade copper wires and in the direction of facilities and technologies capable of delivering broadband services at sufficient speeds, and for reasonable prices, to consumers in rural and high-cost areas who currently do not have any access to broadband services.

The \$7.2 billion in broadband funding that will be distributed through the National Telecommunications and Information Administration's Broadband Technology Opportunities Program¹²³ and the Rural Utilities Service's broadband grant and loan programs¹²⁴ is a useful step, but not all of this funding will find its way to rural and high-cost areas, nor will the amount of this funding be nearly enough for the ubiquitous deployment of “reasonably comparable” broadband services in rural America.

The importance of broadband, and the inadequate degree of its current availability in rural and high-cost areas, give impetus to RCA's suggestion that a new universal service paradigm should focus not only on mobile wireless services, but also on broadband deployment. There are three central components of this task.

First, the Commission needs to solve the problems associated with making broadband a supported service for universal service purposes. The prohibition on the use of universal service funding for the deployment of broadband facilities, networks, and services should be lifted.¹²⁵

¹²² Howard Berkes, *Stimulus Stirs Debate over Rural Broadband Access*, NPR.ORG, Feb. 16, 2009, accessed at <http://www.npr.org/templates/story/story.php?storyId=100739283> (quoting Dee Davis, Director, Center for Rural Strategies), *quoted in* RCA Broadband Comments at 5-6 (internal quotation marks omitted).

¹²³ American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115, Division B, Title VI.

¹²⁴ *Id.*, Division A, Title I (Distance Learning, Telemedicine, and Broadband Program).

¹²⁵ See Coalition and RCA Comments at 16-17.

Second, the Commission should develop definitions of “reasonably comparable” and “sufficient” support in this proceeding in a manner that facilitates the agency’s implementation of a comprehensive rural broadband strategy and its development of a comprehensive national broadband plan, and that enable the deployment of mobile wireless broadband services in rural and high-cost areas.¹²⁶ As RCA has discussed,¹²⁷ advanced wireless technologies that are nearing widespread deployment offer the prospect of bringing broadband speeds to rural areas that are comparable to those available in urban areas. The Commission’s definition of reasonable comparability should enable and promote the deployment of these technologies.

Third, the Commission’s principle of competitive and technological neutrality should govern its development of support mechanisms for broadband service. Competition, the marketplace, and technological innovation should drive the deployment of broadband in rural and high-cost areas. Mobile wireless broadband services provide unique and expanding benefits to consumers, particularly in rural areas, and the Commission’s broadband policies should not impede the deployment of these services.¹²⁸ In this regard, RCA encourages the Commission to reject Embarq’s proposal that “broadband” be defined as downlink capacity of at least 1.5 Mbps.¹²⁹ If such a speed were used as a prerequisite for eligibility to receive high-cost support for broadband services, many current mobile wireless broadband providers would be ineligible for support.

¹²⁶ See *Notice* at para. 28 (seeking comment on the relationship between the non-rural support mechanism and the Commission’s broadband policies).

¹²⁷ See Section II.B.2., *supra*.

¹²⁸ Congress has taken note of the potential advantages of deploying mobile wireless broadband in rural areas, indicating that “mobile broadband technologies are applicable to farmers, ranchers, and small rural business owners” and that, although “[f]ixed broadband service will continue to be important in rural homes and offices, . . . mobile technologies also may have a role to play in expanding broadband access to rural residents.” *Food, Conservation, and Energy Act of 2008*, Conference Report To Accompany H.R. 2419, H. R. RPT. NO. 110-627, at 834 (2008) (Conf. Rep.), *quoted in* RCA Broadband Comments at 19.

¹²⁹ See Embarq BCS Plan at 1.

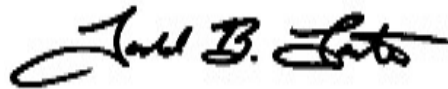
III. CONCLUSION.

Since the Commission first began grappling with the Tenth Circuit's concerns regarding the agency's approach to non-rural universal service support, the demand for services provided by mobile wireless carriers has continued to grow dramatically in both rural and urban areas throughout the United States. Congressional policies reflected in the Telecommunications Act of 1996, as well as judicial decisions and the Commission's own policies, lay a groundwork intended to ensure that mobile wireless carriers have a fair opportunity to compete in rural and high-cost areas. These legislative, judicial, and regulatory policies recognize that rules that promote competition and carrier efficiency will serve to benefit consumers in rural America.

Against this backdrop, the Commission should take the actions necessary in this *Qwest II* remand proceeding to promote competition between wireline incumbents and mobile wireless service providers in rural and high-cost areas. This competition will provide an expanding array of affordable services and will also hasten the availability of broadband services to rural consumers.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

A handwritten signature in black ink, appearing to read "Todd B. Lantor".

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